

Testimony of FCC Commissioner Mignon L. Clyburn

Before the
U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications & Technology
Oversight of the Federal Communications Commission
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Chairman Blackburn, Ranking Member Doyle, Members of the Subcommittee, good afternoon. Allow me to begin by welcoming our newest colleague, Commissioner Carr and a special welcome back to Commissioner Rosenworcel.

We are nine months into a new Administration, making it appropriate I believe, to reflect on the tremendous change that has taken place when it comes to our outlook on consumers, competition and viewpoint diversity. Behind the Washington acronyms, inside of the beltway jargon and flashy press headlines, are a series of actions I fear are jeopardizing the FCC's role, as the referee on the field protecting consumers and small business interests.

In most cases, these come in the form of proceedings that will never garner millions of public comments, but make no mistake, their impact will be felt by every single American: the Lifeline recipient with fewer choices for affordable voice or broadband service; a family forced to pay unreasonably high rates to keep in touch with an incarcerated loved one; or the small business owner now facing immediate price hikes, for high-capacity broadband service.

I begin with a trip down memory lane, that started in February when, an action billed as helping the "country's smaller providers," resulted in billion dollar public companies not having to be transparent with their consumers about things like data caps on their broadband connection.

Also in February, is when the agency refused to fully defend before the D.C. Circuit Court, the inmate calling reforms the prior FCC had adopted. Following the loss of that case in the D.C. Circuit, there was a commitment made by the leadership to address those outstanding issues, but to date, 2.7 million children, as we approach the holiday season, are still waiting for this agency to make good on its word.

Over the objection of my office, the FCC's Wireline Competition Bureau revoked the designation of nine entities already approved to provide Lifeline broadband service back in February. By refusing to allow new broadband providers into the Lifeline program, the digital divide in this country has deepened, widened, and has now become more cemented.

Then in March of this year, was a stay of the FCC's rule requiring voice and broadband providers to take reasonable measures to secure the data that they gather from their customers. As the furor over Equifax and other data breaches show, we need enforceable rules of the road to ensure that consumers are adequately protected when they go online. Sadly, when it comes to broadband providers, we have none.

Next were the showers in April, that could best be described as “Industry Consolidation Month.” Despite endless declarations extolling the need and virtues of clearing our books of antiquated regulations, the FCC majority reinstated the technologically obsolete UHF discount. In doing so, this Commission opened the door to a single broadcast station group reaching more than 70 percent of television households ... an action that does absolutely nothing to further localism or viewpoint diversity on our public airwaves.

In that same month, we paved the way for huge rate hikes on business data services, that will not only negatively impact small businesses but rural hospitals, schools, libraries, and police departments as well. Our use of faulty data and lackadaisical market analysis in this proceeding, resulted in an order that does not reflect market realities. Instead of looking out for millions of “little guys,” the Commission’s majority once again chose to align with the interests of a handful of multi-billion dollar providers.

In May, the FCC majority began the process of undoing the open internet protections that just last year, were upheld by the D.C. Circuit. Beyond a free and open internet, this also has serious ramifications for universal service, and for infrastructure deployment. Although the Commission has received a record number of comments, the Majority continues down a path that leaves consumers and content providers to fend for themselves.

In August, we began an inquiry that may actually put us on a path of lowering the bar for what we now consider to be high-speed broadband. As I travel the country, I can honestly say, that I have never heard anyone clamoring for slower internet speeds. The refrain I hear, is that the service is too expensive and the speeds are too slow. We should be aiming to lead the world in having the fastest, most robust broadband, not heading in the opposite direction by greenlighting broadband service at excruciatingly slow, snail-like speeds.

Last month, we took another worrisome turn, with the adoption of our latest mobile competition report. This was the first time during my tenure, that the Commission used a flawed and truncated analysis, to conclude that the market for commercial mobile wireless services was effectively competitive. Ask those I meet in rural America who are struggling with 2 and 3 “G” service. What they want is reliable wireless connectivity. What they have today is lackluster, non-competitive service. Simply put, our report’s findings do not match with the experiences on the ground, and in communities across this great nation.

Then there is this week, where we have eliminated a rule, that has ensured those entrusted with use of the public airwaves, have a local presence in their community. While I am sympathetic to the concerns facing small and rural broadcasters, the action we took, will eliminate that local connection to the community, without regard to market size or economic standing, and without any guarantee that the savings derived will be invested in expanding local programming or improving newsgathering.

And if I am to believe the reports that I am hearing and reading, in just a matter of days, the Chairman will circulate a series of items, that will roll back the best elements of our media ownership rules. If true, the already consolidated broadcast media market will become even more so, offering little to no discernible benefit for consumers.

Our actions, most often the ones that fail to make the headlines, have real, everyday consequences. And while I will keep doing everything in my power to make sure that we do not dial back any further when it comes to consumer protections, just reasonable and fair phone rates for all of our citizens, media ownership opportunities and digital inclusion, I remain fearful in part, because the rhetoric is not in line with the actions.

What also may have gone unnoticed is how few of the FCC's enforcement actions this year have been targeted at the nation's largest regulatees. Flashy headlines announcing the agency's largest-ever fine disguise the fact that we are predominantly targeting individuals and small businesses, but when large companies are found at fault, we only manage to levy fines that are cents on the dollar of harm to the public. Now I am not especially faulting the actions we have taken to-date on those that have violated the public's trust. What I am saying is that we do need to ensure our rules are equally enforced, and at a minimum, fines should appropriately reflect the level of harm done.

Finally, I would like to address the sizeable number of process fouls that have taken place since the first quarter of 2017. It began, guess when, in February, with what I can best label the "Friday News Dump." It continued in July with a media transaction, involving a major entity with a large pending transaction, which was approved without informing my office. Commitment to transparency and the quote, "longstanding process under which every Commissioner [is] provided 48-hours notice of a significant, bureau-level decision," unquote, let's just say the atmosphere is murky at best. There have been several instances, in which our office should have been made aware and given the opportunity to review an item, but we were not afforded that chance. And now, Commissioners are subject to a new process that will result in the release of a Commission-level item on delegated authority, even when Commissioners have asked for edits and voted on the item.

But I am opting to end on a positive note this afternoon. The Federal Communications Commission has taken important steps to improve accessibility for those living with a disability. We continue to free up spectrum to support the next generation of wireless services. We have acted to implement Mobility Fund Phase II, something I have advocated for years, which will be key in closing the mobile connectivity gap in rural America. I am proud of these actions and remain hopeful that we can find more ways to work together and if we are able to approach the next nine months in a transparent and bipartisan manner, better days are sure to follow.

My thanks to the Subcommittee for providing the opportunity for me to appear before you today. I look forward to answering any questions you may have.